

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-1550

Donald D. Nelson,

Appellant,

v.

Thomas J. Vilsack, Governor;
Tim Hurley, Mayor; Mike Kubick,
Sheriff,

Appellees.

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Appeal from the United States
District Court for the Northern
District of Iowa.

[UNPUBLISHED]

Submitted: September 2, 2004
Filed: September 8, 2004

Before WOLLMAN, McMILLIAN, and RILEY, Circuit Judges.

PER CURIAM.

Iowa inmate Donald Nelson (Nelson) appeals the district court's¹ preservice dismissal of his 42 U.S.C. § 1983 action. Having carefully reviewed the record de novo, see Moore v. Sims, 200 F.3d 1170, 1171 (8th Cir. 2000) (per curiam), we conclude the district court properly dismissed the complaint, see 28 U.S.C. § 2254(b)(1)(A); Heck v. Humphrey, 512 U.S. 477, 486-87 (1994); West v. Atkins,

¹The Honorable Mark W. Bennett, Chief Judge, United States District Court for the Northern District of Iowa.

487 U.S. 42, 48 (1988); Preiser v. Rodriguez, 411 U.S. 475, 499-500 (1973). However, we believe the dismissal should be without prejudice. See Sheldon v. Hundley, 83 F.3d 231, 234 (8th Cir. 1996). Accordingly, we modify the district court's judgment to be without prejudice, and affirm. See 8th Cir. R. 47B. We also deny Nelson's request for appointment of appellate counsel.
